

LEGISLATIVE BILL 127

Approved by the Governor April 13, 1982

Introduced by Sieck, 24

AN ACT relating to surveys and surveyors; to amend sections 23-302, 23-1901, 23-1907, 23-1908, 23-1910, 23-1911, 39-1506, 81-8, 122, 81-8, 122.01, 84-407, and 84-409, Reissue Revised Statutes of Nebraska, 1943, section 23-1901.01, Revised Statutes Supplement, 1980, and section 33-116, Revised Statutes Supplement, 1981; to change provisions relating to county resurveys; to change certain duties of the county surveyors; to change the compensation of county surveyors as prescribed; to provide for a survey record repository; to change certain filing procedures; to provide duties and powers for the State Surveyor; to change the qualifications and compensation of the State Surveyor as prescribed; to eliminate certain provisions relating to chainmen and certificates of surveys; to create a fund and provide for its source and expenditure; and to repeal the original sections, and also sections 23-1902 and 23-1912, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 23-302, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-302. The vote on the proposition shall be canvassed in the same manner as the vote on county officers. If a majority of the votes upon said proposition shall be in favor of the same, the county board shall within thirty days notify the Board of Educational Lands and Funds who shall require such resurvey to be made under its instructions by such competent deputy state surveyor as it shall appoint, assisted by the county surveyor of the county wherein the work is to be done, and according to the laws governing surveys by the State Surveyor and deputy state surveyors. Such surveys shall be made in accordance with the laws of the United States and the rules and regulations of the United States ~~General Land Office~~ Department of Interior, Bureau of Land Management, governing the restoration of lost and obliterated corners and the specifications and instructions of the Board of Educational Lands and Funds. The field notes and plats of said resurvey shall be made

in the manner and form prescribed by the General--Land Office Bureau of Land Management for the return of field notes and maps of United States surveys, and shall be filed in the office of the county clerk of the county where the work is done and duplicate copies filed in the office of the Board of Educational Lands and Funds at Lincoln, Nebraska, before being paid for; Provided, when any integral part of said resurvey is completed upon filing proof of its completion together with plats and field notes for the same approved as provided by law, the county board may allow payment for the part so completed.

Sec. 2. That section 23-1901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1901. It shall be the duty of the county surveyor to make or cause to be made all surveys within his or her county that he or she may be called upon to make and record the same as hereinafter provided. ~~in all such--surveys,--the--county--surveyor--must--distinguish between original, subdivision, and retracement work,--in all retracement and subdivision surveys,--the--unit--of measure--must--be--that--adopted--in--the--original--work.~~ In all counties having a population of fifty thousand inhabitants or more, the county surveyor shall be ex officio county engineer, and shall be either a professional engineer or a registered land surveyor or both, and it shall be his or her duty to prepare all plans, specifications, and detail drawings for the use of the county in advertising and letting all contracts for the building and repair of bridges, culverts, and all public improvements upon the roads. It shall be his or her duty to make estimates of the cost of all such contemplated public improvements, and to make estimates of all material required for such public improvements, and to inspect the material and to have the same measured and ascertained, and report to the county board whether the same is in accordance with their requirements. It shall be his or her duty to superintend the construction of all such public improvements, and inspect and require that the same shall be done according to contract. It shall be his or her duty to make estimates of the cost of all labor and material which shall be necessary for the construction of all bridges and improvements upon public highways, to inspect all of the work and materials placed in any such public improvements, and to make a report in writing to the county board with his or her statement in regard to whether the same comply with the plans, specifications, and detail drawings of the county board prepared for such work or improvements and under which the contract was let. Where the county board proceeds to purchase materials and hire the labor to construct or

repair bridges and culverts and approaches thereto or to make improvements upon the public roads, he or she shall have charge and general supervision of such work or improvements, and shall inspect all materials and direct the work and make a report of each piece of work to the county board. The county engineer or surveyor shall also have such other and further powers as are necessarily incident to the general powers herein granted. The county surveyor shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350. In counties having a population of fifty thousand or more, if the county surveyor is a professional engineer he or she shall appoint as his or her deputy a Registered Land Surveyor, or if he or she is a Registered Land Surveyor he or she shall appoint as his or her deputy a professional engineer; Provided, this requirement shall not apply if the county surveyor is both a professional engineer and a Registered Land Surveyor.

Sec. 3. That section 23-1901.01, Revised Statutes Supplement, 1980, be amended to read as follows:

23-1901.01. When there is no qualified surveyor within a county who will accept the office of county surveyor, the county board of such county may employ a competent surveyor either on a full-time or part-time basis from any other county of the State of Nebraska to such office. In making such employment, the county board shall negotiate a contract with the surveyor, such contract to specify the terms and conditions of the appointment or employment, including the compensation of the surveyor, which compensation shall not be subject to the provisions of section 33-116.

A surveyor employed under this section shall serve the same term as that of an elected surveyor and is not required to reside in the county of employment.

Sec. 4. That section 23-1907, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1907. It shall be the duty of the county surveyor in surveys made by him or her to perpetuate all original corners not at the time well marked, and all corners or angles that he or she may establish or reestablish, in a permanent manner by setting monuments containing ferromagnetic material, of--concrete,--burned vitrified-clay, iron-or-stone,--and depositing-at-the-base thereof,--at-a-suitable-depth-to-protect-it-from--loss--or destruction,--a-memorial-of-durable--material--upon--which

shall be marked the date and the initial letters of the surveyor's name, and where the corner is unmistakably a government corner, the letters G--E-- (initial letters of the words Government Corner), in addition thereto; and where suitably growing trees are convenient to such corner or angle, he shall, in addition to said monument and memorial, carefully note the direction and distance to the middle of each tree, the size and kind of tree, all of which shall be carefully noted in the field note book provided for that purpose. Where witness pits were dug at any original government corners, and they can be identified as such, the surveyor shall record their directions and distances from the corner, according to the instructions of the State Surveyor.

Sec. 5. That section 23-1908, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1908. The boundaries of the public lands established by the duly appointed government surveyors, when approved by the Surveyor General and accepted by the government, are unchangeable, and the corners established thereon by them shall be held and considered as the true corners which they were intended to represent, and the restoration of lines and corners of said surveys and the division of sections into their legal subdivisions shall be in accordance with the laws of the United States, the circular of instructions of the commissioner of the general land office United States Department of the Interior, Bureau of Land Management, on the restoration of lost and obliterated section corners and quarter corners, and the circular of instructions to the county surveyors by the State Surveyor under authority of the Board of Educational Lands and Funds. The county surveyor is hereby authorized to restore lost and obliterated corners of original surveys and to establish the subdivisional corners of sections in accordance with the provisions of this section and section 23-1907. Any Registered Land Surveyor registered under the provisions of sections 81-8,108 to 81-8,127 is hereby authorized to establish any corner not monumented in the original government surveys in accordance with the provisions of this section and section 23-1907. The original survey of sections into their legal subdivisions shall be in accordance with the laws of the United States by running straight lines from the original or legally established quarter section corners to the opposite corresponding corners. The point of intersection of the lines thus run shall be the corner common to the several quarter sections, or the legal center of the section; quarter quarter or one sixteenth corners, not established by the government surveyors, shall be established on

straight lines between the section and quarter section corners and at one-half their actual measured distances, except on the last half mile of section lines closing on township or other boundaries, when they shall be established at proportional distances according to the notes of the government survey thereof. Quarter sections shall be subdivided by first establishing quarter-quarter or one-sixteenth corners, not established by the government surveyors, on straight lines between the section and quarter section corners and between the quarter section corners and the center of the section and at one-half their actual measured distances, except on the last mile of lines closing on township or other boundaries, when they shall be established at proportional distances. From the corners thus established, straight lines shall be run to the opposite corresponding corners, and the point of intersection of the lines thus run shall be the corner common to the several quarter-quarter sections or the legal center of the quarter section. In fractional sections where an opposite side is a lake, river or reservation, and the corners have not or cannot be established, the quarter lines shall be run north, south, east or west, as the case may be at a mean course to the adjacent section lines, but in fractional sections where there are no opposite section lines the subdivisional lines shall be run parallel to their adjacent section lines. Subdivision shall be executed according to the plan indicated by the original field notes and plats of surveys and governed by the original and legally restored corners. The survey of the subdivisional lines of sections in violation of this section shall be absolutely void.

Sec. 6. That section 23-1910, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1910. Each county surveyor shall procure, at the expense of the county, suitable memorandum field books for his or her use in the field, ~~in which he shall cause the chainmen to subscribe their names to the oath prescribed by law.~~ He or she shall enter in such field books, as the work progresses, all the details necessary to make up a complete record of each survey, ~~which are to be transcribed into the official record of surveys.~~ The field books are to be properly indexed and kept on file as a part of the records of his or her office.

Sec. 7. That section 23-1911, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1911. The county surveyor shall also procure a suitable record in which he shall record all surveys, for permanent purposes, made by him, within thirty days after each survey is completed. Said record shall be known as the official record of surveys. The official record of surveys shall describe the initial or starting point of his survey and the evidence by which he identified the same. It shall state how he identified original government corners, and the way and manner in which he perpetuated all the corners of his survey. The record shall be written in the narrative form, after the manner and style of the notes of the United States surveys, using a good quality of black ink. It shall set forth the bearings and lengths of all lines measured, the description of monuments, memorials, bearing trees, and other permanent objects of reference, and all details of the survey including measurements of inaccessible lines and calculation of areas. Diagrams may be used to illustrate the same when convenient or necessary, but they shall in no way supersede or take the place of the written record. The latitudes and departures of all surveys where areas are enclosed must be shown, and the closing errors must be determined and recorded. When witnesses are sworn and testify to any material fact affecting the lines or corners, their testimony must be reduced to writing, subscribed by them and made a part of the official record. The left hand page of the record shall be properly ruled and reserved for field notes, and the right hand page for a plat on a scale of not less than eight inches to the mile, on which shall be entered the courses and length of the lines of each survey, together with the courses of all streams which the lines may cross. The plat shall be a true representation of the field notes and of the work done in the field. Following the plat, the record shall set forth the date of survey, the names of the persons making the application, for whom the work was done, interested parties present, and the names of the chainmen. The surveyor shall certify that he has carefully compared the transcribed notes of the official record, with the memorandum field notes of such survey, and that they are true and correct, and that he has faithfully and truly surveyed the lines and established the corners as specifically set forth in the official record of surveys, the field notes, and map of survey. When the notes have been thus transcribed and certified by the surveyor, they shall be the original notes of such survey. Each survey in the memorandum field books and in the official record shall be indexed by township, section and range, for convenient reference. The county surveyor shall record all surveys, for permanent purposes, made by him or her, as required by sections 81-8, 121 to 81-8, 122.02. Such record shall set forth the names of the persons making

the application for the survey, for whom the work was done, and a statement showing it to be an official county survey or resurvey. The official records, other plats, and field notes of the county surveyor's office shall be deemed and considered public records. Any agent or authority of the United States, or the surveyor State Surveyor or any deputy state surveyor of Nebraska, or any county surveyor registered pursuant to sections 81-8, 108 to 81-8, 127, of Nebraska, shall at all times, within reasonable office or business hours, have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in sections 23-1901, 23-1901.01, 23-1903 to 23-1911, and to 23-1913. In all counties, where no regular office is maintained in the county courthouse for the county surveyor of that county, the county clerk shall be custodian of the official record of surveys and all other permanent records pertaining to the office of county surveyor.

Sec. 8. That section 33-116, Revised Statutes Supplement, 1981, be amended to read as follows:

33-116. Each county surveyor shall be entitled to receive the following fees: (1) For all services rendered to the county or state, ~~not-to-exceed-the-sum-of forty-dollars-per-day~~ a daily rate as determined by the county board; and (2) for each mile actually and necessarily traveled in going to and from work, the rate allowed by the provisions of section 23-1112 for county officers and employees. All expense of necessary assistants in the performance of the above work, the fees of witnesses, and material used for perpetuation and reestablishing lost exterior section and quarter corners necessary for the survey shall be paid for by the county and the remainder of the cost of the survey shall be paid for by the parties for whom the work may be done. All necessary equipment, conveyance, and repairs to such equipment, required in the performance of the duties of the office, shall be furnished such surveyor at the expense of the county; Provided, that in any county with a population of less than fifty thousand, ~~but--more--than twenty-thousand;~~ the county board may, in its discretion, allow the county surveyor a salary of ~~not-to-exceed--nine thousand-dollars-per--annum~~ fixed pursuant to section 23-1114, payable monthly, by warrant drawn on the general fund of the county, ~~and--all~~ All fees received by surveyors so receiving a salary may, with the authorization of the county board, be retained by the surveyor, but in the absence of such authorization all such fees shall be turned over to the county treasurer monthly for credit to the county general fund.

Sec. 9. That section 39-1506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1506. Any person, whether or not a resident of the county, who is a duly licensed engineer in this state, any firm of consulting engineers duly licensed in this state, or any other person who is a competent, experienced, practical road builder shall be qualified to serve as county highway superintendent; Provided, that no member of the county board shall be eligible for appointment; and provided further, that in counties having a population of one-hundred fifty thousand or more inhabitants according to the most recent official United States census, the county surveyor shall perform all the duties and possess all the powers and functions of the county highway superintendent.

Sec. 10. That section 81-8,122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,122. ~~Whenever a survey is executed by a land surveyor, registered under the provisions of sections 81-8,108 to 81-8,127, a copy of the plat and field notes of said survey bearing his signature and seal of the land surveyor~~ When the county shall receive an official copy of a survey from a registered land surveyor or from the survey record repository established pursuant to section 15 of this act, such copy shall be placed on file in the office of the county surveyor in the county where the land is located. If no regular office is maintained in the county courthouse for the county surveyor, it shall be placed on file in the office of the county clerk.

Sec. 11. That section 81-8,122.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,122.01. Whenever a survey has been executed by a land surveyor, registered under the provisions of sections 81-8,108 to 81-8,127, a record of such survey bearing his the signature and seal of the land surveyor shall be filed in the office of the county surveyor in the county where the land is located; Provided; survey record repository established pursuant to section 15 of this act if such survey meets applicable regulations. Surveys which are within the corporate limits of a city with a population in excess of fifteen thousand and do not reference, recover, retrace, or reestablish the original government corners or lines or do not create a new subdivision are not required to be filed in the

survey record repository but shall be filed in the county surveyor's office in the county where the land is located if they meet applicable regulations. If no regular office is maintained in the county courthouse for the county surveyor, it shall be ~~placed in the office of the county clerk:~~ filed in the survey record repository. The record of survey shall be filed within ninety days after the completion of the survey, or within any extension of time granted by the ~~county--surveyor~~ office in which it is required to be filed for reasonable cause, and shall consist of the following minimum data: (1) Plat of the tract surveyed; (2) legal description of the tract surveyed; (3) description of all corners found; (4) description of all corners set; (5) ties to any section corners, quarter corners, or quarter-quarter corners found or set; (6) plat or record distances as well as field measurements; and (7) date of completion of survey. The record of survey so filed shall become an official record of survey, and shall be presumptive evidence of the facts stated therein, ~~unless such surveyor the land surveyor filing the survey~~ shall be interested in the same. Plats or maps which are prepared only for the purpose of showing the location of improvements on existing lots, which are not represented as surveys or land surveys and no corners are established or reestablished, shall be specifically exempt from all requirements of this section.

Sec. 12. That section 84-407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-407. (1) The Board of Educational Lands and Funds shall appoint a competent and experienced land surveyor, ~~who shall also be a competent draftsman,~~ to be known and designated as the State Surveyor. He or she shall take charge under the supervision of the board of the field notes, maps, charts, and records of the United States surveys and perform such other duties as may be prescribed by the board.

(2) The board may, when in its judgment there is need of expediting the execution of surveys applied or petitioned for and of expediting the settlement of the disputes referred to in section 84-410, appoint one or more competent experienced deputy land surveyors.

(3) Each of the deputy surveyors shall make such surveys as may be assigned him or her and report his or her work together with all necessary notes and maps to the board. Upon approval of his or her report and accompanying documents by the board, the same shall be used in all respects as though made by the chief State

Surveyor. Each deputy appointed under the provisions of this section, except as otherwise provided in section 84-407.01, shall be entitled to ~~forty-eight-dollars-per day compensation as determined by the board~~ and necessary expenses for the time actually engaged in service, to be paid to the State Treasurer by the parties applying for or petitioning for a survey or resurvey, and parties interested in any dispute over surveys or boundaries.

Sec. 13. That section 84-409, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-409. There shall be paid to the State Treasurer, for each day the State Surveyor is engaged in making any survey or in settling and disposing of disputes and disagreements, as provided in section 84-410, ~~the sum of forty-eight-dollars-per-day a per diem rate of compensation as determined by the Board of Educational Lands and Funds~~ for his or her services and the necessary expenses incurred in making the same. All fees received for the services and expenses of the State Surveyor or deputy surveyors shall be paid into the state treasury and by the State Treasurer placed in a fund to be known as Surveyors' Cash Fund, which fund shall be used in paying the salaries and expenses of deputy surveyors, except as provided in section 84-407.01, in making surveys and for making refunds on deposits. All fees and expenses placed in the Surveyors' Cash Fund for the services and expenses of the State Surveyor, after the payments from the cash fund are made as hereinbefore provided, shall be transferred to the General Fund.

Sec. 14. The State Surveyor and deputy surveyors in the official performance of their duties shall have authority to enter upon any property to make surveys. Entry upon any property, pursuant to this section, shall not be considered to be legal trespass and no damages shall be recoverable on that account alone. In case of any actual or demonstrable damages to the premises, the owner of the premises shall be paid an amount equal to the damages.

Sec. 15. The State Surveyor shall establish a survey record repository in the city of Lincoln. The State Surveyor shall employ all individuals necessary to staff such repository and may, with the approval of the Board of Educational Lands and Funds, set the salaries of such employees.

Sec. 16. The survey record repository shall:

(1) Microfilm, index, and file the surveying records of all surveys completed after the effective date of this act which are filed pursuant to sections 81-8, 121 to 81-8, 122.01;

(2) Provide a copy of survey records to the county in which the survey was conducted. Such copy shall be transmitted to the county within thirty days of its receipt by the repository and at no cost to the county;

(3) As funds become available from the fees collected pursuant to this section, and at no cost to the counties, request records of all surveys completed prior to the effective date of this act from the counties and incorporate such records into the repository's files;

(4) Collect a fee not to exceed five dollars for each survey of a subdivision or a survey which makes reference to an original government corner and collect a fee not to exceed two dollars and fifty cents for all other surveys filed with the repository by a surveyor, except that no fee shall be charged for filing surveys pursuant to section 23-1911 when the work is requested by the county and when no fees for the survey are received by the surveyor or the county from any other persons;

(5) Collect a fee not to exceed ten dollars for each search of the repository's files required by any person;

(6) Charge a fee for the reproduction of material equal to the cost of such reproduction; and

(7) Provide information to any person upon request and payment of the appropriate fee.

Sec. 17. The State Surveyor, under the direction of the Board of Educational Lands and Funds, shall receive and account for all money derived from the operation of the survey record repository pursuant to sections 15 and 16 of this act, and shall pay such money to the State Treasurer, who shall keep such money in a separate fund to be known as the Survey Record Repository Fund which is hereby created. When appropriated by the Legislature, this fund shall be expended only for the purposes of sections 15 and 16 of this act. All money in the Survey Record Repository Fund available for investment shall be invested by the state investment officer pursuant to Chapter 72, article 12.

Sec. 18. No expense for developing or maintaining the survey record repository shall be paid

for by funds from the General Fund. The fees for records, searches, and other services related to the repository's files shall be set so that all costs of the survey record repository are paid by the persons requesting such records, searches, or other services.

Sec. 19. That original sections 23-302, 23-1901, 23-1907, 23-1908, 23-1910, 23-1911, 39-1506, 81-8,122, 81-8,122.01, 84-407, and 84-409, Reissue Revised Statutes of Nebraska, 1943, section 23-1901.01, Revised Statutes Supplement, 1980, and section 33-116, Revised Statutes Supplement, 1981, and also sections 23-1902 and 23-1912, Reissue Revised Statutes of Nebraska, 1943, are repealed.